

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 2:73-cv-26

and

BAY MILLS INDIAN COMMUNITY,
SAULT STE. MARIE TRIBE
OF CHIPPEWA INDIANS,
GRAND TRAVERSE BAND OF
OTTAWA AND CHIPPEWA
INDIANS, LITTLE RIVER BAND
OF OTTAWA INDIANS, and
LITTLE TRAVERSE BAY BAND
OF ODAWA INDIANS,

Hon. Richard Alan Enslen

Plaintiff-Intervenors/Counter-Defendants,

v.

STATE OF MICHIGAN, *et al.*,

ORDER

Defendants/Counter-Claimants.

Pending before this Court are Proposed Intervenors Coalition to Protect Michigan Resources f/k/a Michigan Fisheries Resource Conservation Coalition, Stuart Cheney, Robert Andrus and the Walloon Lake Trust and Conservancy's Third Motion to Intervene. The Motion is unusual because it is filed during the course of negotiations which, according to the parties, are likely to result in a binding Consent Decree. It is also unusual because the Motion was filed during the pendency of the Proposed Intervenors' appeal (Sixth Circuit no. 05-2685) of the Court's Order of November 3, 2005 denying Proposed Intervenors' Renewed Motion to Intervene. Finally, it is an unusual Motion because one of its sponsors, attorney Stephen Schultz, admitted during the status conference of February 21, 2007 that the Motion was filed in the context of negotiations and he did not desire a ruling at the time of the status conference. Defendant State of Michigan

has taken no position regarding the Motion. Plaintiff United States of America and the Plaintiff-Intervenors Bay Mills Indian Community *et al.* have actively opposed the Motion.

Upon review of this matter, the Court concludes that it lacks jurisdiction to entertain the present Motion due to the pending appeal. *See Ft. Gratiot Sanitary Landfill, Inc. v. Michigan Dep't of Nat'l Res.*, 71 F.3d 1197, 1203 (6th Cir. 1995); *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *Newton v. Consol. Gas Co.*, 258 U.S. 165, 177 (1922).

THEREFORE, IT IS HEREBY ORDERED that Proposed Intervenors Coalition to Protect Michigan Resources f/k/a Michigan Fisheries Resource Conservation Coalition, Stuart Cheney, Robert Andrus and the Walloon Lake Trust and Conservancy's Third Motion to Intervene (Dkt. No. 1748) is **DENIED** due to lack of jurisdiction.

DATED in Kalamazoo, MI:
May 14, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE